

U.S. DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
Suite 700-1111 20th Street, N.W.
Washington, D.C. 20036



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In the Matter of :
:
WILLIAM H. HAMILTON :
:
v. :
:
FLORIDA DEPARTMENT OF LABOR :
AND EMPLOYMENT SECURITY :
.....

Case No. 83-WPA-2

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ORDER OF DISMISSAL

This case arises under the Wagner-Peyser Act of 1973, as amended, 29 U.S.C. §49, pursuant to the complainant's request for hearing under 20 C.F.R. 658.421(d). The complainant seeks to compel the Florida State Employment Service (FSES), a division of the respondent herein, to provide him with a copy of an interstate job clearance order filed by William Price, Inc., on April 19, 1980.

The respondent and the Solicitor's Office of the U.S. Department of Labor (Solicitor) argue that the case is moot because the complainant has already obtained a copy of the clearance order from the U.S. Department of Labor, Employment and Training Administration (ETA).

The pertinent facts of this case are not in dispute. Despite several entreaties, FSES has consistently refused to provide the complainant with a copy of the order or a summary of its contents. Therefore, on April 20, 1981, the complainant filed a request under the Freedom of Information Act (FOIA) with the ETA for a copy of the order. On May 1, 1981, ETA provided the complainant with a copy of the job clearance order. Nonetheless, the complainant continues to press his job service complaint in an attempt to establish FSES's legal obligation to disclose the clearance order.

In general, a case becomes moot when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome. Murphy v. Hunt, 455 U.S. 478 (1982). The doctrine of mootness thereby ensures that only cases or controversies are decided by federal courts and agencies.

Since the complainant has already received a copy of the job clearance order, he no longer has a present interest affected by FSES's policy regarding clearance order disclosure. However, this case should not be dismissed if FSES's policy is "capable of repetition, yet evading review." Southern Pacific Terminal Co. v. ICC, 219 U.S. 498, 515 (1911). A case meets the "capable of repetition, yet evading review" test if: (1) the challenged action [is] in its dura-

tion too short to be fully litigated prior to its cessation or expiration, and (2) there [is] a reasonable expectation that the same complaining party would be subjected to the same action again." Weinstein v. Bradford, 423 U.S. 147, 149 (1975).

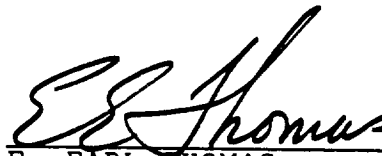
It is found that the instant case fails to satisfy either requirement of this test. First, there is no reason to believe that the FSES policy regarding clearance order disclosure will evade review. The complainant contends that all similarly situated workers will obtain clearance orders from ETA rather than allow the statute of limitations to bar their claims. However, it is not clear that all such workers will voluntarily "moot" their job service complaints by seeking the clearance order under the FIOA. Also, newly recruited workers may seek disclosure from FSES before they actually gain any legal rights by working under the clearance order.

Second, there is no reasonable expectation that the complainant will be subject to FSES's policy in the future. While the complainant might engage in seasonal farm work, it is unlikely that he will again be recruited by a designated "crew leader" to replace referred workers who have prematurely left the job.

Since the complainant does not have any immediate or continuing legal interest in FSES's policy, Super Tire Engineering Co. v. McCorkle, 416 U.S. 115 (1974), cited by the complainant, is inopposite to this case. This case is also unlike Ray Baillie Trash Hauling, Inc., v. Kleppe, 477 F.2d 696 (5th Cir. 1973), because the FSES policy has been consistent and long enduring and therefore will not escape review because of its short duration. Gannet Co. v. DePasqasle, 443 U.S. 368 (1979).

In conclusion, it is found that the complainant no longer has a legal interest affected by FSES's policy, and that the necessary elements of a case or controversy are not present in this case. It is further found that the "capable of repetition, yet evading review" doctrine does not preclude a finding of mootness.

Accordingly, it is ORDERED that this case be, and the same hereby is, DISMISSED as moot.


E. EARL THOMAS
Deputy Chief Judge

Dated: MAR 6 1984
Washington, DC

EET:LS:ksv

SERVICE SHEET

Case Name: William H. Hamilton

Case No.: 83-WPA-2

I certify that a copy of the foregoing document was sent to the following individuals on MAR 6 1984.

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